

***United States Court of Appeals
for the Second Circuit***



**BRIEF FOR
APPELLEE**

74-1042

To be argued by
EUGENE F. BANNIGAN

United States Court of Appeals FOR THE SECOND CIRCUIT

Docket No. 74-1042

UNITED STATES OF AMERICA,

Appellee,

—v.—

LAM MAN CHUNG, a/k/a "William Lam",
a/k/a "Ja B Lam",

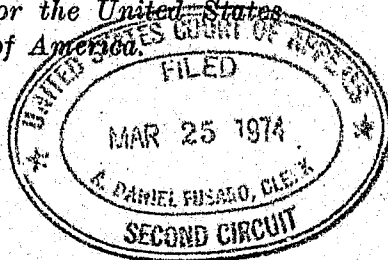
Defendant-Appellant.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

BRIEF FOR THE UNITED STATES OF AMERICA

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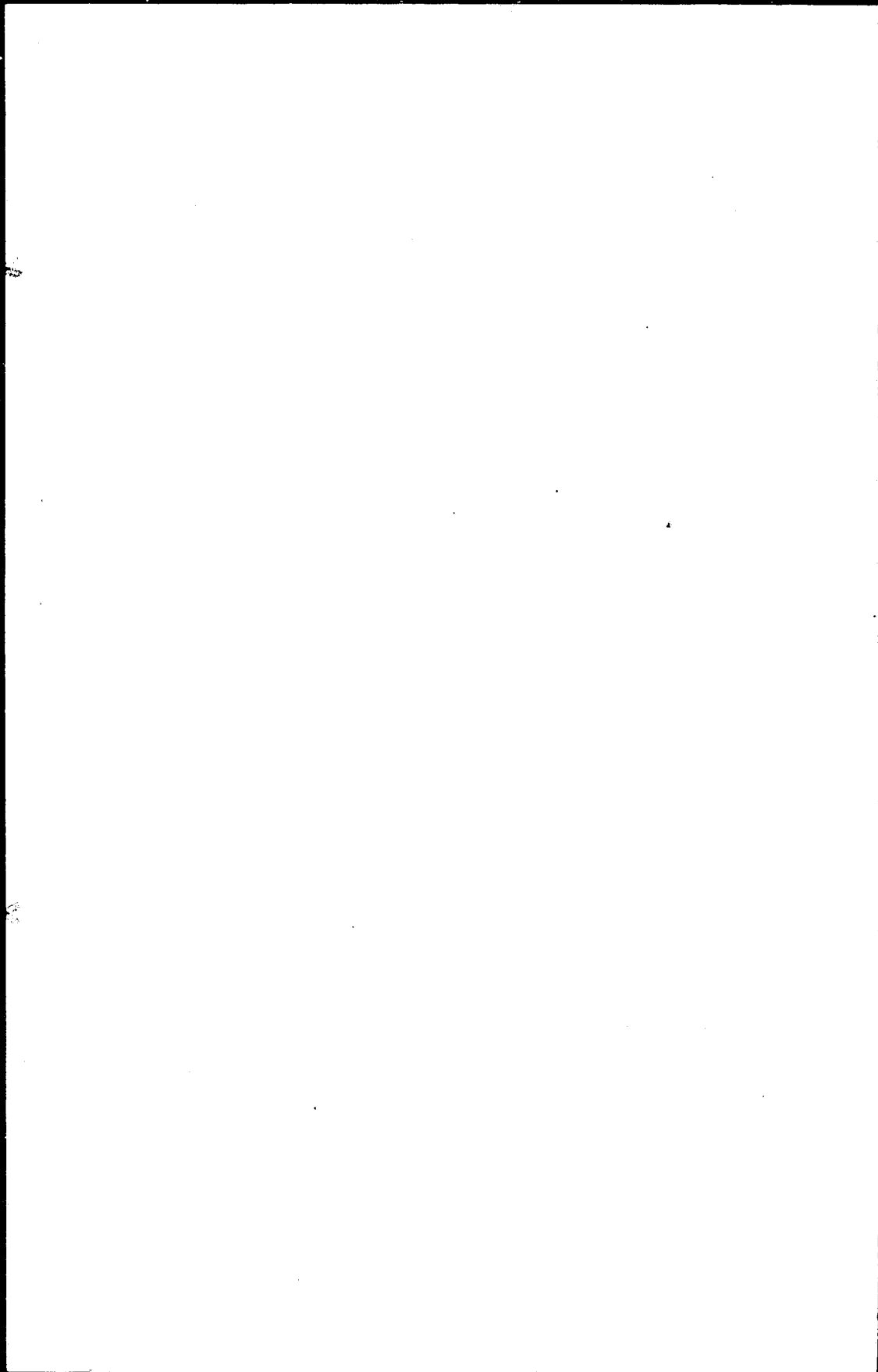


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LAM MAN CHUNG, a/k/a "William Lam",
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Defendant-Appellant.

BRIEF FOR THE UNITED STATES OF AMERICA

Preliminary Statement

Lam Man Chung, a/k/a "William Lam", a/k/a "Ja B Lam" appeals from a judgment of conviction entered on December 21, 1973, in the United States District Court for the Southern District of New York, after a two week trial before the Honorable Morris E. Lasker, United States District Judge, and a jury.

Indictment 73 Cr. 920, in six counts, was filed on September 28, 1973. Count One charged Lam and three co-defendants, Wing Piu Lai, Yuet Lan Lai and Juan Pang Chea, with conspiracy to distribute heroin, in violation of Title 21, United States Code, Section 846. Named as a co-conspirator, but not as a defendant, was Cheng Wing Cheung, a/k/a "Sang." Counts Two through Six charged various of the defendants with substantive violations of the federal narcotics laws, Title 21, United States Code, Sections 812, 841(a)(1) and 841(b)(1)(A). Count Two charged the

Lais and Chea with distributing approximately 433 grams of heroin; Count Three charged the Lais with distributing approximately 859 grams of heroin; Count Four charged Chea with possession of approximately 859 grams of heroin with intent to distribute; Count Five charged Lam with possession of approximately 428 grams of heroin with intent to distribute and Count Six charged the Lais with possession of approximately 2926 grams of heroin * with intent to distribute.

The trial commenced on October 10, 1973, was adjourned for two weeks from October 17 to November 5, 1973 **, and ended on November 8, 1973, when the jury returned guilty verdicts against Wing Piu Lai *** on Counts One, Two, Three and Six; Juan Pang Chea on Counts One, Two and Four; and Lam Man Chung on Count Five.****

On December 21, 1973, Lai was sentenced to concurrent 10 year terms of imprisonment on Counts One, Two, Three and Six, and fined a total of \$40,000; Chea was sentenced to concurrent 7 year terms of imprisonment on Counts One,

* The heroin which formed the predicate for Count Six was seized from the Lais in Brooklyn. Prior to the start of the trial the Lais waived venue and elected to be tried on this count in the Southern District of New York.

** The adjournment from October 17 to November 5, 1973 was granted to allow the defendants' expert an opportunity to evaluate the voluminous scientific data generated by the Government's chemist during his analysis of the heroin.

*** On the first day of the trial Yuet Lan Lai moved for a severance and separate trial on the ground that Wing Piu Lai, her husband, whom she intended to call as a witness on her own behalf, would assert his Fifth Amendment privilege and refuse to testify if called as a witness during his own trial. The motion was granted on October 11, 1973, and Mrs. Lai was subsequently tried by the court on December 10 and 20, 1973. On December 21, 1973 Judge Lasker acquitted Yuet Lan Lai of all charges.

**** At the close of all the evidence the trial court granted Lam's motion, pursuant to Rule 29, Fed. R. Cr. P., for a judgment of acquittal on the conspiracy count.

Two and Four and fined a total of \$9,999.99; and Lam was fined \$5,000 and sentenced to 5 years imprisonment on Count Five, to be served consecutively with a 10 year sentence of imprisonment imposed by the Honorable Murray I. Gurfein following Lam's plea of guilty on July 26, 1973 to a single count of Indictment 73 Cr. 443. In addition, Lai and Chea were sentenced to a three year period of special parole to follow incarceration. Lam was given a six year period of special parole.

Each of the defendants is presently serving his sentence.*

Statement of Facts

A. The Government's Case

Synopsis:

The Government's proof at trial established that Wing Piu Lai was a major supplier of brown rock heroin in the New York City Chinatown area; that Juan Pang Chea was both an independent heroin importer and a principal distributor for Lai; and, that appellant Lam Man Chung was both a supplier to and customer of Chea's.

1. April 30, 1973

On April 30, 1973, Special Agents Joseph Quarequio and Raymond Tripp, posing as underworld mobsters interested in purchasing large quantities of heroin, met Cheng Wing Cheung, a/k/a "Sang". Quarequio told Sang that he wished to buy heroin and was interested in knowing what quantities of the drug were available and what the selling price would be. Sang replied that his boss had 15 to 20 pounds for sale at a price of \$13,000 per pound. Quarequio responded that this price was too high and he would like to speak to Sang's boss in an effort to reduce the price to \$11,000 per pound. Sang stated that his boss (Juan Pang Chea) was aware of

* Neither Lai nor Chea filed notices of appeal.

Sang's meeting with the agents and had already agreed to meet with Quarequio. After driving Sang to fetch Chea, Quarequio and Chea had a long discussion concerning the price, quality and availability of heroin. During this conversation Chea confirmed the price of \$13,000 per pound, as earlier quoted by Sang, but told the agents that he would have to check with his partner on the price if the agents wished to buy 15 to 20 pounds in a single transaction. Chea told Quarequio that the heroin was located outside the New York City area and that he would have to consult with his partner prior to entering into any agreement with the agents. In parting, Quarequio told Chea that he would contact him when he was ready to go forward with a purchase (Tr. 20-30, 236-244).*

2. May 31, 1973

Quarequio and Tripp next met Chea in the early evening hours on May 31, 1973 at the Vesuvio Restaurant in midtown Manhattan, where Quarequio had made a dinner reservation under the name Angelo Marino. In route to the restaurant with the agents Chea mentioned that he had heroin connections in both England and Holland and that if Quarequio wished to obtain heroin from these sources he would have to supply Chea with a Chinese travelling companion to accompany him to either England or Holland. Following dinner at the Vesuvio, the agents took Chea to a motel where they had reserved a room to conduct further negotiations. During the next hour and a half Chea told the agents that in addition to the Chinese partner, to whom he had referred at the April 30th meeting, he also had a Cuban partner living in Miami, Florida. He explained that he had known his Cuban partner since 1953 and had had numerous heroin transactions with him, including one involving 50 kilograms. Chea also discussed obtaining heroin from his suppliers in Holland and England. He told the

* Reference prefixed "Tr" refer to the trial transcript; "GX" refers to Government Exhibits received in evidence.

agents that heroin purchased from these suppliers would cost \$13,000 a *kilogram*, plus an additional \$500 a kilogram to be paid to the courier.* Finally, Chea explained that on one occasion when he had gone to Holland to purchase heroin he had concealed \$100,000 in purchase money inside a cake.** At approximately 11:30 in the evening the discussions concluded and the agents drove Chea back to Chinatown (Tr. 30-42, 244-256).

3. June 14, 1973

At 8:00 o'clock in the evening on June 14, 1973 Quarequo and Tripp met Chea and drove him to Ponti's Restaurant, where Quarequo had again made dinner reservations under the name Angelo Marino (GX 21). During dinner Chea told the agents that Ja B Lam,*** an individual who did a lot of gambling at Chea's gambling house, had offered him \$3,000 for his jade ring**** and had asked Chea if he could become his partner in Chea's heroin business. Following dinner Chea accompanied the agents to their car, where he told them that after they purchased the first kilogram of European heroin he could supply them with between 12 and 15 kilograms a month. After a brief discussion concerning smuggling heroin into the United States from

* While Chea was explaining his relationship with his Cuban partner and the cost of heroin from his European suppliers, he simultaneously made cryptic notes on a piece of hotel stationery. For example, he wrote the figure "1953", representing the year he first became acquainted with his Cuban partner; the figures "13" and "5", representing \$13,000 for a kilogram of heroin and \$500 for the courier for each kilogram of heroin brought from Europe (Tr. 30-42; GX 1).

** Chea's Alien Resident Entry Permit (GX 5) showed that he had made one trip to Holland.

*** "Ja B Lam" was an alias known by the agents to be used by defendant Lam Man Chung.

**** Chea had first shown the agents his ring during dinner at the Vesuvio Restaurant on May 31, 1973. At that time he told the agents that the ring was worth \$5,000 (Tr. 33, 248).

England, Holland, Hong Kong and Singapore, Chea explained that he had to return to his gambling house and pay his employees (Tr. 42-44, 257-260).

4. June 18, 1973

The name Ja B Lam arose again on June 18, 1973 when Quarequio met with Chea to ascertain when Chea planned on going to Europe to obtain one to two kilograms of heroin for him. During the discussion concerning this trip, Chea told Quarequio that he had a friend who had between two and four ounces of heroin for sale at \$1,600 per ounce. When Quarequio asked how Chea knew this friend had the heroin, Chea replied that his friend was Ja B Lam, that he had made more than \$300,000 and finally, that he, Chea, had already tried the heroin.* The conversation concluded when Chea told Quarequio that he would contact him when he was ready to go to Europe (Tr. 45-47).

* The entire conversation between Chea and Quarequio on June 18, 1973 was recorded. A transcript of that portion of the conversation relating to Ja B Lam, edited to reflect both the Government's and defendant Lam's version of the conversation, was received in evidence as Government Exhibit 3529:

Joe Q: Two kilos ounce, two ounce; two ounce; Oh Juan

Chea: Three ounce, four maybe (Laughing)

Chea: He knows me.

Joe Q: Oh he knows you?

Chea: (Low tones—CHINESE)

Chea: No, pass too much time.

CHINESE

Joe Q: I tell you, I tell you if you go to jail you go to jail the same way if you do ten kilos or if you do two ounces. That's why I like to do ten kilos.

Chea: Same way go jail.

Joe Q: You go to jail the same way if you're gonna take the chance, you might as well take the chance with a lot. And how you know this friend with the two ounces.

[Footnote continued on following page]

5. June 25, 1973

In the early afternoon on June 25, 1973 Quarequio, accompanied by Tripp, met Chea and asked him when he would be going overseas. Chea replied that he would go at the end of June or in early July. He then told the agents that an Australian Chinese friend of his had recently come to the City and was in the market to sell pound quantities of brown rock heroin. Chea stated that this friend would sell nothing less than four pounds at a time for a price of \$13,000 a pound. Quarequio told Chea that he might be interested but would like to see a sample of the heroin first. Chea reached into his right sock and removed a white envelope containing a small quantity of brown rock heroin, which he handed to Quarequio (GX 23). Quarequio told Chea that he would show the sample to his customer and, if he liked it, place an order with Chea * (Tr. 45-50).

Chea: This friend.

Chea: Jabby Lam he has lots of money.

Defendant's Chea: No him, have more than \$300,000 here. He young man.

Government's Chea: Know him, have more than \$300,000 here. He young man.

Joe Q: The man with the two ounce. That's all, only two ounces?

Defendant's Chea: No, he make money more than \$300,000. Jabby Lam too much money.

Government's, Chea: Now, he make money more than \$300,000. Jabby Lam too much money.

Joe Q: And he's got only two ounces. That's all, only two ounces.

Chea: What do you call it just two ounces.
(CHINESE)

Chea: Maybe four, I guarantee good. I try.

Joe Q: He tried it.

Chea: Little bit, I tried (laughing in Chinese.)

* During this conversation Chea told the agents that if they did not wish to purchase his Australian Chinese friend's heroin, he would contact his Cuban partner and sell it to him (Tr. 49).

6. June 28 and 29, 1973

On June 28, 1973, Chea telephoned Tripp and told him that he wished to meet with him to discuss the sale of a half pound of heroin. Later that day Tripp met Chea in Chinatown and was told by Chea that his Australian Chinese friend would not sell less than a pound, but had agreed to sell the first pound to the agents for \$11,000—a \$2,000 discount. Tripp and Chea then discussed the method of delivery. At the conclusion of the negotiations Tripp told Chea that he would call him later in the evening to finalize the transaction. Early the next morning Tripp called Chea and told him that he and Quarequio would meet him at 1:00 P.M. (Tr. 265-271).

Driving separate vehicles, Quarequio and Tripp arrived in the vicinity of Broome and Allen Streets in Manhattan at approximately 1:45 in the afternoon on June 29, 1973. After both cars were parked, Chea and Tripp joined Quarequio in his car. Quarequio showed Chea \$11,000, contained in a brown vinyl attache case (GX 3), and told him that he was ready to purchase one pound of heroin. Chea responded by telling Quarequio that everything was arranged for 8:00 o'clock that night. Quarequio, however, explained that he had promised to deliver the package to his customer at 3:00 o'clock. Reluctantly, Chea agreed to telephone his friend to see if an earlier delivery could be arranged. After making a phone call Chea returned to Quarequio's car and told the agents that his friend would make the delivery at 4:00 P.M. Quarequio and Chea agreed that the heroin would be delivered to Tripp in his car, while Quarequio remained in his own car with the money. After the delivery, Tripp would examine the heroin and, if satisfied, he would drive his car passed Quarequio's and signal him that the heroin was of the quality promised. Chea would then go to Quarequio's car and receive payment (Tr. 72-76).

At approximately 4:30 P.M. that afternoon Wing Piu Lai, carrying a brown paper bag, and his wife Yuet Lan Lai

got out of a taxi at the corner of Allen and Broome Streets and proceeded down Broome Street until they arrived at Chea's apartment building at 261 Broome Street, which they entered. A few moments later Chea and Mr. Lai, who was still carrying the brown paper bag, emerged from the apartment building and walked to Allen Street, where Tripp was waiting in his car. Upon reaching the car Lai stopped, placed the paper bag on the front seat and then continued on down Allen Street. Tripp examined the pound of heroin (GX 4B) contained in the paper bag, drove his car to a spot parallel to Quarequio's vehicle, signaled Quarequio that the heroin had been delivered and then drove out of the area. Quarequio then handed Chea, who had just entered Quarequio's car, the brown vinyl attache case containing \$11,000. Chea left the car and walked back to his apartment on Broome Street. An hour later surveillance agents saw the Lais leave Chea's apartment building * (Tr. 72-78, 271-279, 373-378).

7. July 3, 1973

Following the June 29th transaction Quarequio next spoke with Chea on July 3, 1973. He telephoned Chea at 11:00 o'clock in the morning and told him that he wished to purchase another pound of heroin. Chea responded that he could not obtain the additional pound but nevertheless wished to meet Quarequio later that day. At 1:00 o'clock in the afternoon Quarequio and Chea met in Chinatown and Chea explained that he could not obtain the heroin because his Australian Chinese friend had left New York and would not return until Wednesday, July 11. During the course of the discussion Chea mentioned that he had been approached by the person whom he had told Quarequio on June 18 was going to supply him with between two and four ounces of heroin. Chea told Quarequio that this individual had asked to buy between one and two pounds of heroin.

* The entire transaction of June 29, 1973 was photographed by surveillance agents (GX 17, 17A-17D).

Chea stated that he told this individual he would charge him the high price of \$16,000 a pound because he had sought to charge Chea the high price of \$1,600 an ounce when Chea was attempting to obtain two to four ounces of heroin for Quarequo (Tr. 81-84).

Following the meeting on July 3, Quarequo had no further meetings with Chea. However, on July 6, 1972, he spoke with Chea on the telephone and told him that he had a customer who wished to purchase twenty pounds of heroin and that since he was going on vacation for the next two weeks Chea should contact Tripp to let him know if Chea's Australian Chinese friend, Wing Piu Lai, could supply the 20 pounds. Chea agreed to do so (Tr. 84-85).

8. July 10, 11 and 12, 1973

On July 10, 1973 Tripp met Chea in Chinatown and asked him if he could supply the twenty pounds that Quarequo had requested. Chea replied that twenty pounds was too much but he believed his Australian-Chinese friend had ten pounds available. He then told Tripp that he wanted to know how much Tripp wanted and when he wanted it. Tripp said he would telephone Chea the following day (Tr. 284-289).

At 6:00 p.m. on July 11 Tripp phoned Chea and told him that he wished to meet with him and would be over shortly. He met Chea at 7:30 at Broome and Allen Streets, where he arranged to purchase a pound of heroin from Chea later that evening. Chea agreed to the sale, but told Tripp to phone him before he came to pick up the heroin. At 8:00 o'clock Tripp called and was told by Chea to come right up to his apartment—apartment C7. Shortly after 8:00 p.m. Tripp was admitted to Chea's apartment and given a pound of heroin (GX 6B), which Chea placed in the brown vinyl attache case (GX 3) that Quarequo had given him on June 29. Tripp and Chea then went to the trunk of Tripp's

car from which Tripp removed \$13,000 and gave it to Chea. A few moments later Chea returned to his apartment (Tr. 292-297, 386-389).

Later that same evening, at approximately 10:30, Lam Man Chung, empty handed, got out of a taxi cab on the corner of Allen and Broome Streets and went directly to Chea's apartment building. At 11:55 p.m. Lam, carrying a shopping bag, left Chea's building and was followed to Grand and Chrystie Streets where he was placed under arrest. The shopping bag (GX 8B) and a pound of heroin (GX 8A) which was contained inside it were seized, as was Lam's address book which contained Chea's telephone number written in code * (Tr. 292-297, 390-393, 470-477; GX 12).

On July 12, 1973 Chea was arrested in his apartment on Broome Street (Tr. 477-484, 401-404). Following the arrest, Chea's apartment was searched pursuant to a warrant. Among the items seized during this search was Chea's address book, which contained Lam's telephone number on both the first and third pages. No money or narcotics were found in Chea's apartment (Tr. 516-520).**

B. The Defense Case

None of the defendants testified. Lam, however, called Shirley Moy, a Chinese interpreter, as a witness on his behalf.

* Chea's telephone number was 431-8937. In Lam's book Chea's phone number was written as 431-7398 preceded by a Chinese character which translated into English means "Old Chea" (Tr. 1120-1121).

** The statement in the footnote on page 16 of Lam's brief that the \$13,000 used by Tripp to purchase a pound of heroin from Chea on July 11, 1973 was found in the apartment is incorrect. The \$13,000 was found in Lai's safe deposit box on July 16, 1973 (Tr. 507-509).

Moy testified that the Chinese write from right to left, the opposite of the English procedure.* She also translated the Chinese character next to Chea's uncoded phone number, found in Lam's address book. She testified that the character meant "Old Chea", and that the adjective "Old" was used as a good omen in addressing a friend (Tr. 1118-1122).

ARGUMENT

The Court's refusal to instruct the jury not to consider the hearsay declarations of Juan Pang Chea on the substantive count was proper.

Lam contends that the hearsay evidence admitted at trial could have been properly considered by the jury only on the conspiracy count. Thus, he argues, the trial court's refusal, following dismissal of that charge, to instruct the jury not to consider the hearsay evidence received at trial subject to connection, in reaching a verdict on the substantive offense charged in Count Five, was error. The contention is without merit.

At the close of the Government's case, Judge Lasker dismissed the conspiracy count against Lam apparently finding insufficient proof that Lam knew of and associated himself with the three month multi-party conspiracy involving Chea, Wing Pui Lai, Yuet Lan Lai, and Ching Wing Cheung, a/k/a "Sang." *United States v. Aviles*, 274 F.2d 179 (2d Cir. 1960). This conclusion, however, did not, as Lam urges in his brief (p. 10), automatically preclude the trial court from finding the evidence sufficient to establish a joint venture between Lam and Chea such as to allow the jury to consider certain hearsay declarations of Chea against Lam

* In summation Lam's counsel argued that Chea's number was not written in code, but merely in the style used by the Chinese. He offered no explanation, however, as to why only the last four digits of the number were written in the Chinese style while the first three digits were written in the English manner.

on the substantive count. *Ottomano v. United States*, 468 F.2d 269, 273 (1st Cir. 1972), *cert. denied*, 409 U.S. 1128 (1973); *United States v. Binder*, 453 F.2d 805, 809 (2d Cir.), *cert. denied*, 407 U.S. 920 (1971); *United States v. Branker*, 418 F.2d 378, 380 (2d Cir. 1969).

The evidence was more than adequate to permit the trial judge to find by a fair preponderance the existence of an ongoing joint criminal enterprise between Chea and Lam to traffic in heroin which led up to the transfer of a pound of heroin from Chea to Lam on July 11, 1973. At the time the agents seized the pound of heroin from Lam they also recovered his address book, which contained Chea's telephone number written in code. The following day when Chea was arrested, his address book was also seized. On both the first and third pages of Chea's book the agents found Lam's telephone number. The fact that Chea and Lam had each other's phone numbers, combined with the disguised manner in which Lam had recorded Chea's number, clearly supports the inference of a prior ongoing relationship between them for illicit purposes. *United States v. Ruiz*, 477 F.2d 918 (2d Cir. 1973); Cf. *United States v. Garelle*, 438 F.2d 366, 369-370 (2d Cir. 1970), *cert. dismissed*, 401 U.S. 967 (1971). That this association was based on heroin dealings which predated the July 11 transaction is evident from the substantial size of that transaction. Considering the clandestine nature of the narcotics trade and the excessive caution exercised by those engaged in it, it defies credulity to believe that Chea and Lam would undertake the transfer of a pound of heroin valued at \$13,000 if, prior thereto, they had not had additional dealings during which each had assured himself of the other's trustworthiness. *United States v. Barrera*, 486 F.2d 333, 337 (2d Cir. 1973).

Thus, a joint heroin venture between Lam and Chea necessarily predating July 11, 1973 was established by independent non-hearsay evidence, and the declarations of co-venturer Chea made on both June 14 and 18 were admis-

sible as statements in furtherance of that joint venture.* *United States v. D'Amato*, slip op. 2199, 2201, 2210 (n. 4), — F.2d — (2d Cir. March 14, 1974); *United States v. Berger*, 433 F.2d 680, 683 (2d Cir. 1970), *cert. denied*, 401 U.S. 962 (1971); *United States v. Rinaldi*, 393 F.2d 97, 99 (2d Cir.), *cert. denied*, 393 U.S. 913 (1968); *United States v. Messina*, 388 F.2d 393, 395 (2d Cir.), *cert. denied*, 390 U.S. 1026 (1968); *United States v. Granello*, 365 F.2d 990, 995 (2d Cir. 1966), *cert. denied*, 386 U.S. 1019 (1967).

In *D'Amato*, *supra*, an undercover agent named McElroy first met with a co-conspirator named Burdieri (who was deceased at the time of trial) on January 31, 1973. At that meeting Burdieri bragged about the importance in the heroin business of the defendant-appellant D'Amato, who, according to Burdieri, had taken over the heroin operations of one Vinnie Pappa. The first substantive narcotics transaction and with it the first non-hearsay proof of D'Amato's membership in the conspiracy did not come about until February 20, 1973. This Court held, nevertheless, that the January 31 statements to McElroy by Burdieri were admissible against D'Amato as having been made in furtherance of the conspiracy charged (slip op. at 2210 n. 4). Similarly, Chea's touting statements on June 14 that Lam, a man of

*Lam's contention, that the June 14 statement of Chea to Quarequo that Lam wanted to become Chea's partner is inadmissible in any event because it is double hearsay, is groundless. So long as the prior level of hearsay between Lam and Chea also comes within an exception to the hearsay rule, the statement of Chea to Quarequo incorporating it is admissible. *United States v. Calarco*, 424 F.2d 657, 664 n. 2 (2d Cir. 1970) (dissenting opinion of Judge Dooling). Proposed Rules of Evidence for United States Courts and Magistrates, 805. The implied statement from Lam to Chea is itself a statement of a co-venturer in furtherance of the venture. It is also an admission and a declaration of present state of mind. Under any of these rubrics it would be admissible standing by itself and hence admissible when contained within the subsequent admissible co-venturer declaration by Chea to Quarequo.

sufficient wealth to offer to buy Chea's jade ring for \$3,000, wanted to become Chea's heroin partner and again on June 18 that Lam who had earned \$300,000 (presumably in narcotics dealings) could supply two to four ounces of high quality heroin for sale to Quarequoio were admissible as statements in furtherance of a joint venture.

Lam's contention that the precise origin (as apart from the ultimate existence) of a joint criminal enterprise must be shown by independent evidence before any co-conspirator hearsay declarations relating to its early stages can be admitted into evidence is not even supported by the one case which he cites, *United States v. Cafaro*, 455 F.2d 323, 327 (2d Cir. 1972). The court there considered one hearsay declaration made in June, 1970 to have preceded the formation of the conspiracy. However, the damaging November 24 hearsay declaration of acquitted co-defendant Mainetti, which the court ruled to have been properly admitted against appellants Cafaro and Schulman, chronologically preceded any non-hearsay proof of their involvement in the extortion conspiracy against the victim, Fitzgerald.*

Even were the rule of law as Lam contends, elements of the recorded declarations of Chea on June 18 were ad-

* Lam also argues that the hearsay statements, even if made in furtherance of a joint venture of which he was a member, fail to bear sufficient "indicia of reliability" and are inadmissible for that reason. See original opinion of the panel in *United States v. Puco*, 476 F.2d 1099 (2d Cir. 1973). This argument fails for two reasons. First, the Government submits that no separate finding of "indicia of reliability" is required. See dissenting opinion of Lumbard, J. on petition for rehearing, *Id.* at 1108, and dissenting opinion of Friendly, Ch.J., joined in by Timbers and Hayes, C.J.J. on petition for rehearing *in banc*, *Id.* at 1111. Second, even under the views of the two members of the panel in *United States v. Puco*, as expressed in the panel's supplemental opinion, the statements of Chea, like virtually every statement in furtherance of a joint venture, do bare such indicia of reliability. Here they were declarations against Chea's penal interest at the time he made them. See *United States v. D'Amato*, *supra*, at 2210.

missible against Lam. For example, the statements of Chea on June 18 clearly indicated his intent to engage in a mutual heroin enterprise with Lam to supply Quarequo and thus were relevant to show that when Chea later transferred an entire pound of heroin to Lam his relationship to Lam was one between partners rather than one between a knowing master and an ignorant messenger boy. *United States v. Cioffi*, slip op. 2227, 2232 — F.2d — (2d Cir. March 14, 1974); *United States v. D'Amato*, *supra*, at 2206 (n. 2); *United States v. Annunziato*, 293 F.2d 373, 376-77 (2d Cir.), *cert. denied*, 368 U.S. 919 (1961).

CONCLUSION

The conviction should be affirmed.

Respectfully submitted,

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Southern District of New York,
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Of Counsel.*

AFFIDAVIT OF MAILING

State of New York)

: ss.:

County of New York)

EUGENE F. BANNIGAN being duly sworn,
deposes and says that he is employed in the office of
the United States Attorney for the Southern District
of New York.

That on the 25th day of March, 1974
he served ^{two copies} ~~copy~~ of the within Brief
by placing the same in a properly postpaid franked
envelope addressed:

Krieger, Fisher, Metzger and Scribner
401 Broadway
New York, New York 10013

And deponent further says that he sealed the said en-
velope and placed the same in the mail drop for
mailing in the United States Courthouse, Foley
Square, Borough of Manhattan, City of New York.


EUGENE F. BANNIGAN

Sworn to before me this

25th day of March, 1974.



WALTER G. BRANNON
Notary Public, State of New York
No. 24-0394500
Qualified in Kings County
Cert. filed in New York County
Term Expires March 30, 1975

